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International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

Concluding observations on the initial report of Timor-Leste

Addendum

Information received from Timor-Leste on follow-up to the concluding observations*

[Date received: 17 November 2017]

* The present document is being issued without formal editing.

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Introduction

1. After Timor-Leste submitted its initial report on the implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) in 2015, and during the interactive dialogue between the Timor-Leste delegation and the CMW Committee, recommendations were made to Timor-Leste and the State Party to the Convention was asked to provide information within two years (by 9 September 2017) about the implementation of recommendations in paragraphs 28, 48, 50 and 60. As a State Party to this Convention, the State of Timor-Leste is hereby submitting its follow-up report on the implementation of the aforementioned recommendations as requested in paragraph 63 of the Concluding Observations on the initial report from Timor-Leste.

Substantive information relating to the implementation of recommendations made by the CMW Committee contained in paragraphs 28, 48, 50 and 60.

In Paragraph 28, the Committee recommended that the State Party "increase labour inspections and prosecute, punish and sanction persons or groups exploiting child migrant workers or subjecting them to forced labour and abuse, especially in the informal economy. The Committee also recommends that the State Party provide adequate assistance, protection and rehabilitation, including psychosocial rehabilitation, to children who have been victims of labour exploitation".

2. In order to provide adequate assistance, protection and rehabilitation, including psychosocial rehabilitation, to children who have been victims of labour exploitation, the Government of Timor-Leste is currently engaging in efforts to develop a draft law listing activities that are prohibited or dangerous to children. This law will include an article that deals with medical and social assistance that must be provided to minors in cases of exploitation of child workers. Therefore, pursuant to Article 9 of the aforementioned draft law:

(1) When the Inspectorate-General for Labour identifies that children are engaged in dangerous activities this fact must be immediately communicated to the service under the government body responsible for the areas of health and social assistance;

(2) These services are responsible for providing the necessary medical and social assistance to prevent children from engaging in dangerous activities and from risks resulting from the exercise of such activities;

(3) The Inspectorate-General for Labour is also responsible for reporting to the Public Prosecution Service any form of dangerous child labour that indicates that a crime is being committed. This article also applies to situations that lead to the exploitation of child migrant workers, with measures that are applicable to all minors up to the age of 18 who are engaged in activities in the territory of Timor-Leste. Monitoring carried out by the Inspectorate-General for Labour includes an obligation to cooperate with other entities, especially when there are indications that certain crimes are being committed.

3. In relation to the violation of the rights of minors, Article 99.2 of the Labour Law states that: "Violation of the rights of children and exaction of forced labour, as provided for in this law and in international conventions ratified by Timor-Leste, shall be communicated to the Public Prosecution to enable it to initiate prosecution and establish civil and criminal liability of the parties involved". In relation to International Labour Organisation's Convention 29 on Forced Labour, Timor-Leste ratified it via Parliamentary Resolution No. 10/2009, dated 8 April, while International Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour was ratified via Parliamentary Resolution No. 9/2009, and dated 8 April. These conventions have become part of the legal framework of Timor-Leste.

4. Also, the Government is currently engaging in a national campaign and disseminating information through commemorating the World Day against Child Labour every 12 July in an effort to specifically protect children from forced and abusive labour

situations in Timor-Leste. Currently there is a draft National Plan against Child Labour that is awaiting approval from the Council of Ministers. The State of Timor-Leste is thus making efforts to implement the International Conventions it has ratified and to apply their provisions.

In Paragraph 48, the Committee recommended that "the State Party take the necessary measures to guarantee to migrant workers and members of their families, both in law and in practice, the right to form and be a member of the executive bodies of associations and unions for the promotion and protection of their economic, social, cultural and other interests, in accordance with Article 40 of the Convention and ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)".

5. According to Article 52.1 of the Timor-Leste Constitution, every worker has the right to form or join trade unions and professional associations in defense of his or her rights and interests. Every worker has the right to form or join trade unions and professional associations in defence of his or her rights and interests. When the Timor-Leste Constitution refers to workers, it refers to both national and foreign workers. The 2003 Immigration and Asylum Law, which in article 11 prohibited non-nationals from taking part in unions, was revoked earlier this year by a new Law on Immigration and Asylum (LIA), Law 11/2017 of 24 May. The new law does not include prohibit participations in unions in the list of restrictions places on foreigners. It guarantees in article 3 that "foreign workers in the national territory enjoy the same rights, freedoms and guarantees, and are subject to the same duties as Timorese citizens, as enshrined in the Constitution and the laws, without prejudice to established legal limits regarding the category of foreigner and rights reserved for citizens of the Democratic Republic of Timor-Leste".

6. The freedom of association and the right to organise are also provided for in the Labour Law. Article 78 states that "all workers and employers, without any discrimination and without any need for prior authorization, shall be free to establish and become members of organisations the objective of which is to promote and defend their rights and interests. In additions, article 77 of the Labour Law stipulates that "a foreign worker exercising professional activity shall enjoy the same rights and be subjected to the same duties to national workers, pursuant to this law and the international labour conventions ratified by Timor-Leste. In addition to these national guarantees which are now harmonized, Timor-Leste also party to ILO Convention No. 87 on the "Freedom of Association and Protection of the Right to Organise", that Timor-Leste has ratified via Parliamentary Resolution No. 7/2009, dated 25 March: "Workers and employers shall, without distinction and without prior authorization, have the right to establish such organizations as they deem appropriate, and to join such organizations, subject only to observing the statutes of such organizations"; and Article 3 states that "Workers' and employers' organizations shall have the right to draw up their statutes and administrative regulations, to elect their representatives freely, to organize their administration and activities and to formulate their program of action." The public authorities shall refrain from any intervention aimed at limiting this right or hindering its legal exercise.

7. To protect international and national workers pursuant to Article 2 of ILO Convention No. 98 on the "right to organise and collective bargaining" that Timor-Leste has ratified via Parliamentary Resolution No. 8/2009, dated 25 March, "Workers' and employers' organizations shall enjoy adequate protection against acts of interference by one another or by agents or members of one another in their composition, operation and administration. In accordance with this article, acts of interference shall be considered principally to promote the establishment of workers' organizations dominated by employers' organizations or to maintain workers' organizations with financial or other resources in order to subject such organizations to the control of employers or organizations of employers".

8. Based on the norms and arrangements set out in the ILO Convention, national and foreign workers' and employer's organisations are free to draw up their own statutes and regulations without any prior authorisation from any competent authority of the State and are given protection by the competent authorities when there is interference from another

entity trying to remove or limit the exercise of their legitimate rights that have been established through the acquisition of legal personality.

9. It can be concluded that labour legislation in force within the legal framework of Timor-Leste conforms with the articles of International Conventions that relate to the protection of the rights of migrant workers and members of their families. According to the Immigration and Asylum Act, Law No. 11/2017, dated 24 May:

(1) Chapter II, the Rights and Duties of Foreign Workers, Article 3, Principles of Legality:

> "Foreign workers in the national territory enjoy the same rights, freedoms and guarantees, and are subject to the same duties as Timorese citizens, as enshrined in the Constitution and the laws, without prejudice to established legal limits regarding the category of foreigner and rights reserved for citizens of the Democratic Republic of Timor-Leste";

(2) Article 7, Rights of Association, states:

> "It is permissible for foreigners to join or be affiliated with associations that have cultural, religious, recreational, sporting, charitable or beneficial purposes and to attend meetings commemorating their national dates".

In Paragraph 50, the Committee recommended that the State Party undertake all measures, including those of a legislative nature, to ensure the implementation of the right to vote for Timorese migrant workers residing abroad.

10. For the first time in its history, Timor-Leste facilitated voting abroad in Presidential and Parliamentary Elections held in February and July 2017. While for the Presidential elections, voter registration and polling was conducted in three polling centres abroad (two in Australia (Darwin and Sydney), one in Portugal (Lisbon), this was expanded to a total of five for the Parliamentary Elections (one additional in Australia (Melbourne), one in South-Korea (Seoul) and one in the United Kingdom (London). The places where polling abroad was conducted was based on the presence of Timorese believed to be highest in these place, including those who are taking part in the two national labour programmes that Timor-Leste has had for several years with South-Korea and Australia.

11. Amendments were made to the Law on the Election of the President, the Law on the Election of the National Parliament and a new Law on Voter Registration, Law No. 6/2016 was adopted to make registration and voting, counting and tabulation abroad possible. Two new Government Decrees, No. 8/2017 and No. 19/2017 were adopted that specifically dealt with the procedures to organize presidential and parliamentary elections respectively, abroad. During the presidential elections 886 voters registered in Australia (228 in Darwin and 658 in Sydney) and 512 in Lisbon. How many voted and how many were registered and voted in the Parliamentary elections.

12. The State of Timor-Leste through Law No. 8/2011, Second Amendment to Law no. 7/2006 dated 28 December (Law on the Election of the President of the Republic), in Article 39.1 states that: 1) Timorese citizens who are or reside abroad shall enjoy the protection of the State. 2) Pursuant to the preceding paragraph, such Timorese citizens may exercise their right to vote as long as they are registered as voters and are in the possession of an updated voter's card and valid passport. 3) The applicable procedure has been defined in law, namely in Article 2 of the second amendment to Law No. 6/2006, dated 28 December, as amended by Law No. 6/2007, dated 31 May, which is an addition to the original text and states the following: Article 37A Timorese Citizens overseas 1) Timorese citizens who are or reside abroad shall enjoy the protection of the State. 2) Pursuant to the preceding paragraph, such Timorese citizens may exercise their right to vote as long as they are registered as voters and are in the possession of an updated voter's card and valid passport. 3) The applicable procedure shall be set out in a Government regulation.

13. Also, Law No. 4/2017, dated 23 February, approving the Fifth Amendment to Law No. 7/2006, dated 28 December, (Law on the Election of the President of the Republic), in Article 39 A, state that:

(2) Pursuant to the preceding paragraph, Timorese citizens who are abroad may exercise their right to vote as long as they are registered as voters and they produce their electoral card;

(3) Article 39.3 is applicable to those voting overseas;

(4) Regulations that provide for voting overseas have been approved through a Government Decree. Government Resolution No. 24/2016, dated 17 August approves the schedule for Voter Registration.

14. Law No. 6/2016, dated 25 May, on voter registration, was approved by the National Parliament, in accordance with a Government draft and came into force on 26 May 2016. The legal framework established in Law No. 6/2016, dated 25 May, and provides for voter registration abroad. This is considered necessary to ensure the transparency of the voter registration process by providing a credible and broad measure for electoral processes to uphold the rule of law and democracy, by coordinating with all government departments and public administration services involved in the voter registration process.

15. The Government of Timor-Leste planned to increase the number of voting centres for citizens abroad in April 2017 in South Korea and the United Kingdom, to enable them to vote in the next legislative elections, and to expand the options that were available to residents in Portugal and Australia during the recent presidential elections. This issue was debated on Tuesday in the Council of Ministers and a resolution was approved regarding "updating voter registration overseas for the next parliamentary election", as mentioned in an executive release. Before engaging in voter registration operations, the Technical Secretariat for Electoral Administration (STAE) will promote a campaign to provide information to the public, which will "include the dissemination of information on voter registration overseas" which is aimed at Timorese communities.

16. The National Electoral Commission (CNE) announced that the Government wants to assess all conditions relevant to Timorese citizens in other nations "before considering whether or not to set up a voting centre" not just in Portugal or Australia. "The purpose is to start a new phase of voter registration in May and then decide where to establish voting centres". For the first time since Timor-Leste became independent, Timorese citizens residing in Australia and Portugal were able to vote in presidential elections on 20 March. Previously, the only other time that Timorese citizens were able to vote overseas was in the referendum on 30 August 1999, or prior to the restoration of independence, and they have been unable to participate in any electoral activity from that time forward.

Paragraph 60, The Committee recommended for the State Party to: Allocate sufficient resources for the implementation of strategies to detect and eliminate trafficking in persons.

17. The Ministry of Justice, Ministry of Foreign Affairs and Cooperation (MNEC), MSS, Ministry of the Interior (PNTL) and the Ministry of State Administration together with other partners have formed a working group on Human Trafficking with civil society actors at the national level, for example national organisations (JSMP, PRADET, ALOLA Foundation, HAK Association, FOKUPERS and AJAR) as well as international agencies, such as IOM, to work together as integrated partners to disseminate information to the public about human trafficking, and to provide information, legal analysis, including other forms of social assistance that has described on the Human Trafficking law for prevention and suppression.

Adopt without delay the Law on Trafficking in Persons and ensure its conformity with international human rights standards and its implementation.

18. On 25 January 2017, the Law on the Prevention and Fight against Human Trafficking and the Fourth Amendment to the Penal Code, Law No. 3/2017 was promulgated. It includes a specific provision stipulating that "The provisions of this law shall be without prejudice to the obligations arising from the Additional Protocol to the UN

Convention on Against Transnational Organized Crime to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and other human rights treaties to which Timor-Leste is a State Party (art. 36)" The law will complement Article 163 of the Penal Code which deals with human trafficking and Article 165 which criminalizes trafficking in human organs.

You may not need the paras below here as the recommendation is on the law.

19. The State of Timor-Leste has taken action, in relation to the implementation of its action plan and relevant policies, including legislation on Human Trafficking, to ensure the rights of citizens to access the courts. The Government of Timor-Leste has approved a Law number 3/2017 on Human Trafficking.

20. In 2016 the Ministry of Justice and the Office of the Prime Minister re-established a Working Group to combat human trafficking which comprises members of the relevant ministries and representatives of civil society to establish a National Action Plan to combat human trafficking. In addition, Timor-Leste has also signed and adopted an Action Plan to fight against human trafficking among the member states of the Community of Portuguese Speaking Nations (CPLP).

Evaluate the phenomenon of trafficking in persons and compile systematic disaggregated data to better combat trafficking in persons, especially women and children, and bring perpetrators to justice.

21. Timor-Leste, as a new country with limited resources, acknowledges that there are a range of crimes occurring, including the crime of human trafficking. This crime has emerged in Timor-Leste as the result of globalisation, information technologies as well as economic and social factors. Preventive actions by the State of Timor-Leste have taken the form of legislative instrument. Crimes against personal liberty are laid down in Articles 162–166 of the Penal Code and carry a maximum penalty of 8–25 years in prison.[1] Through these articles the State of Timor-Leste has continued to try and make improvements in accordance with international norms and has amended the law relating to the right to personal freedom, security and integrity on four occasions, with the latest amendment to the Criminal Code, in Law No. 3/2017, dated 25 January, on the prevention and combatting of human trafficking.

22. Timor-Leste is a country based on democratic rights, which are synonymous with the rule of law, whereby all citizens have the same rights to gain "access to justice"[2] The Penal Code enshrines the principle of legality which means that any act or omission may only be considered a crime and punished as such, when and if provided for in law. In relation to procedural matters based on the Criminal Procedure Code, the Public Prosecution Service initiates criminal procedures and coordinates its work with the National Police of Timor-Leste to notify, investigate, prepare charges and finally prosecute matters before the courts.

23. Timor-Leste is starting to compile systematically data on instances of trafficking. The following data is available at present.

(1) National

No.	*Type of Case*	*Sex*	*Age*	*Origin*	*Total*
1	Recruitment through friends as an attempt to work in Malaysia and England.	F	15–26	Oecusse	10 victims
2	Victims were given promises by their family (older sister, husband, and school friend) that they would work in hotels but they work as prostitutes and the family receive the money	F	16–20		4 victims

[1] Penal code, article 162–166.

[2] TL Constitution, article 26.

(2) International

No.	*Type*	*Sex*	*Age*	*Origin*	*Total*
1	Recruited from their home country and come on a tourist visa to work in supermarkets and prostitution	F	21–39	China	19 Chinese victims

Additional information regarding to Human Trafficking: Relating to IOM research in border between Timor-Leste and Indonesia has registered total of 178 cases of human trafficking in 2016 composed of 100% women trafficking including children and adults.[3]

Increase its efforts at victim identification and provide protection and assistance to all victims of human trafficking, in particular by providing shelters, medical care, psychosocial and other support to assist in their reintegration into society.

24. The State of Timor-Leste, through the Ministry of Social Solidarity (MSS), has engaged in a range of measures to provide protection and assistance to victims of human trafficking. A referral network has been established in all municipalities. Budget support is provided to the NGOs, like the Alola Foundation and PRADET to disseminate information to all entities, to provide logistical support to national and international victims of human trafficking. Particularly food, psychosocial support and to prevent victims from being traumatised while their cases are being dealt with through the formal justice system. In addition, the MSS works with partners, such as civil society, to ensure legal assistance and other forms of social assistance. Between 2008–2017, MSS allocated funds totalling USD $ 132,497.37.

25. The Ministry and relevant sections of civil society provide services and assistance to victims and apply a code of conduct for services to protect the privacy of victims and with consideration to legal issues. Also, protection is provided to victims and their families based on the Witness Protection Law No. 2/2009. To provide maximum support for this program a Committee on Witness Protection has been established, that is administered by the Ministry of Justice (MoJ). Certain measures have already been initiated, for example, the dissemination of information, coordination and efforts to provide more materials on witness protection including witnesses of victims of human trafficking and others.

26. The Ministry of Justice, Ministry of Foreign Affairs and Cooperation (MNEC), MSS, Ministry of the Interior (through the National Police -PNTL) and the Ministry of State Administration together with other partners have formed a Working Group on Human Trafficking. This group includes civil society actors at the national level, (like JSMP, PRADET, ALOLA Foundation, HAK Association, FOKUPERS and AJAR) as well as international agencies, such as IOM, to work together as integrated partners to disseminate information to the public about human trafficking, and to provide information, legal analysis, and other forms of social assistance. The Working Group was also involved in the process to draft the Law on Human Trafficking.

Investigate and punish all cases of corruption involving police officials.

27. Since Timor-Leste became a State Party to the CMW, crimes of corruption have been committed by police officers. The Anti-Corruption Commission which commenced its work in 2010 investigated three (3) such cases involving seventeen (17) police officers between 2011–2014.[4]

28. Nine (9) case of corruption committed by police officers were tried and decided in court between 2011–2014. Seven (7) people were sentenced to prison for three (3) years,

[3] Results from the research conducted by IOM on policy development on human trafficking border between Timor-Leste and Indonesia, page 40.

[4] The information was provided by the Commission against Corruption.

one (1) person was sentenced to imprisonment for four (4) years and one person was sentenced to prison for seven (7) years.[5]

[5] The information was provided by the Dili District Court.